IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No.622 of 2005

Date of decision: January 3, 2006.

Sewak Ram and other ..... Appellants.

Versus

State of H.P. ..... Respondents.

Coram

The Hon'ble Mr. Justice V.M.Jain,J.
Whether approved for reporting[1]*?*

For the appellant: **Mr.P.C.Sharma, Advocate.**

For the respondent: **Mr.Ashutosh Burathoki, Addl. Advocate General for respondent No.1.**

V.M.Jain,J.

This Regular Second Appeal has been filed by the plaintiff-appellants against the Judgments and Decrees of the Courts below whereby the suit filed by the plaintiff-appellants was dismissed by the trial Court and the appeal filed by them was also dismissed by the learned Addl. District Judge.

The learned Addl. District Judge while dismissing the appeal filed by the plaintiff-appellants had found as a fact that the plaintiffs had failed to prove that they were in actual cultivating possession of the suit land. It was found that none of the plaintiffs had

[1] Whether the reporters of Local Papers may be allowed to see the Judgment?

appeared in the witness box to substantiate their plea regarding their possession over the suit land. Nothing has been pointed out before me to show that this finding regarding possession, given by the learned Addl. District Judge is contrary to the evidence available on the record or that there is any misreading of evidence or that any material piece of evidence was ignored by the learned Addl. District Judge while giving this finding. That being so, in my opinion, there is no scope of interfering with the finding of the learned Addl. District Judge that the plaintiffs had failed to prove that they were in cultivating possession of the suit land.

Furthermore, while dismissing the suit of the plaintiffs it was found by the trial Court that the Civil Court had no jurisdiction to go into the question as to whether the suit land had vested in the State of Himachal Pradesh or not, in view of the jurisdictional bar created by Section 10 of the Himachal Pradesh Village Common Lands and Utilisation Act, 1974. However, the learned Addl. District Judge had held that the Civil Court had the jurisdiction to entertain and decide the present suit. In my

opinion, the finding given by the learned Addl. District Judge that the Civil Court had the jurisdiction to entertain and decide the present suit cannot be accepted, in view of the law laid down by this Court in the case of *Keshav Ram and others* vs. *State of H.P. and others,* RSA No.530 of 2005 decided on 8.11.2005, in which after considering the entire law on the subject it was held by this Court that the Civil Court had no jurisdiction to try and decide the suit with regard to the prayer for declaration etc., unless the plaintiffs are able to show that the orders passed by the Collector etc. were illegal and void. Thus the finding of the learned Additional District Judge that the Civil Court had jurisdiction to entertain and decide the present suit is contrary to law and is accordingly reversed and it is held that the Civil Court had no jurisdiction to entertain and decide the present suit.

The learned Addl. District Judge while dismissing he appeal of the plaintiff-appellants had also found that defendant No.1 State of Himachal Pradesh was the owner in possession of the suit land after the suit land had vested in the State of Himachal Pradesh and that the

plaintiffs were neither the owners nor in possession of the suit land. This finding given by the learned Addl. District Judge is also a finding of fact based on evidence and does not call for any interference from this Court in the present Regular Second Appeal.

In view of the detailed discussion above, in my opinion, there is no merit in this appeal and the same is liable to be dismissed, especially when no question of law much less a substantial question of law is involved in this appeal. Accordingly, finding no merit in this appeal, the same is hereby dismissed.

CMP No.1084 of 2005

Infructuous.

3rd January, 2006 (V.M.Jain),J.
(SDS)